

J. P. HINDS ET AL.

IBLA 76-370

Decided June 1, 1976

Appeal from decision of the California State Office, Bureau of Land Management, declaring mining claims null and void (CA-3305).

Affirmed.

1. Mining Claims: Generally--Mining Claims: Lands Subject to--School Lands: Generally

When title to an entire in-place school section has passed to the state, the United States no longer has a property interest therein and the land is no longer subject to location under the mining laws.

2. Millsites: Generally--Mining Claims: Withdrawn Land-- Withdrawals and Reservations: Reclamation Withdrawals

Mining claims and millsites located upon land which has been previously withdrawn from entry under the mining laws by a first-form reclamation withdrawal are void ab initio. Because Departmental Order 2515 delegated authority to revoke such a withdrawal to the Bureau of Reclamation with the concurrence of the Bureau of Land Management, the land remains withdrawn from mining locations when the Bureau of Land Management does not concur with the recommendation of the Bureau of Reclamation to revoke the withdrawal and restore the land to entry.

3. Mining Claims: Hearings--Mining Claims: Lands Subject to--Mining Claims: Withdrawn Land--Rules of Practice: Appeals: Hearings--Rules of Practice: Hearings-- Withdrawals and Reservations: Generally--Withdrawals and Reservations: Reclamation Withdrawals-- Withdrawals and Reservations: Revocation and Restoration

A request for a hearing pursuant to 43 CFR 4.415 for the purpose of taking testimony on the Bureau of Land Management's "continued refusal" to restore

land in a reclamation withdrawal to entry will be denied. An appeal from a decision declaring mining claims and millsites null and void ab initio because the lands are in the withdrawal may not serve as the vehicle for petitioning the Secretary of the Interior to revoke the withdrawal. Furthermore, even if the withdrawal were revoked and the lands opened to entry, this action could not revive mining claims which were void when located while the withdrawal was in effect and the land closed to entry under the mining laws.

APPEARANCES: M. William Tilden, Esq., Lonergan, Jordan, Gresham, Varner & Savage, San Bernardino, California, for appellants.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

J. P. Hinds, Ruth M. Hinds and Clara S. Gretscher, individually and as Administratrix of the estate of F. A. Gretscher, appeal from the decision dated November 13, 1975, of the California State Office, Bureau of Land Management (BLM), declaring null and void numerous

mining claims and millsites (CA-3305). ^{1/} The mining claims are variously located in sections 8, 16, 21, 22, 23, 26, 27, 34 and 35, T. 3 N., R. 26 E., S.B.M., California. The reasons given for the decision are that title to section 16, an in-place school section, passed to the State of California prior to the location of claims in that section and that the other sections were withdrawn from mineral entry for the Colorado River Reclamation Project prior to the location of any claim. The lands were withdrawn under the first form of withdrawal as provided in section 3 of the Act of June 17, 1902, 32 Stat. 388.

[1] Section 16 is an in-place school section. Title to this land presumptively passed to the State of California upon the date of survey, July 10, 1895. Cf. Navajo Tribe of Indians v. State of Utah, 12 IBLA 1, 80 I.D. 441 (1973). Where title has passed to a state under such a grant, the United States no longer has a property interest in the land, and it is not subject to location under the mining laws. Cf. Russ Journigan, 16 IBLA 79, 80 (1974). Appellants have not raised any question concerning the effectiveness of the grant to the state. Therefore, the decision concerning section 16 will be deemed correct.

^{1/} The mining claims and millsites located by appellants and involved in this appeal are listed in the appendix to this decision. The statement of reasons purports to give reasons for an appeal from a decision dated February 12, 1969. Otherwise, it refers to the matters which are the subject of this appeal, and we consider the reference as a harmless error in the absence of some other explanation.

[2] Appellants' contentions go to the status of the reclamation withdrawal on the other lands. They assert that the Bureau of Reclamation entered orders of revocation of the withdrawal for the lands in question in 1953 and 1954 and that BLM improperly failed to concur in the revocations. They argue that the failure of BLM to concur in the revocations of the withdrawal was contrary to law and an abuse of discretion. Therefore, they conclude, the withdrawal was unlawful, and the land was open to entry, at the time the mining claims and millsites were located in 1954-56 and 1970-74. (See appendix, p.____.) We find no merit in appellants' argument and therefore affirm the decision of the State Office.

It is an established rule that mining claims and millsites located on land previously withdrawn from entry under the mining laws by a first-form reclamation withdrawal are null and void ab initio. United States v. Guzman, 18 IBLA 109, 116-17, 81 I.D. 685, 688 (1974); Russ Journigan, *supra* at 80; Frank Zappia, 10 IBLA 178, 183 (1973); Ralph Page, 8 IBLA 435, 437 (1972). Here, the withdrawal was effective June 4, 1930. The earliest mining claim location was on December 11, 1954. Therefore, unless the withdrawal has been revoked and the land restored to entry, all of the appellants' mining claims and millsites fall within the above rule and are null and void ab initio.

There has not been an order effectively revoking the withdrawal and restoring the land to entry. The fact that the Bureau of Reclamation suggested revoking the withdrawal in 1953 and 1954 does not change the status of the land. In both revocation orders, the Bureau of Reclamation stated that they were made pursuant to the authority delegated by Departmental Order 2515 dated April 7, 1949. In Departmental Order 2515, the Secretary of the Interior delegated the authority to revoke reclamation withdrawals to the Bureau of Reclamation "with the concurrence of the Bureau of Land Management." BLM has never concurred in the revocations of the withdrawal. The withdrawal here has not been effectively revoked, and the land restored to entry, during the more than 20-year period since appellants allege that the Bureau of Reclamation "saw no further justification for continued withdrawal of the land from public entry." The withdrawal was in effect when the earliest mining claim was located and when all subsequent mining claims and millsites were located, thus precluding such location regardless whether the Department was considering the revocation of the withdrawal. Everett E. Wilder, 15 IBLA 336, 342 (1974), citing Donald E. Miller, 2 IBLA 309, 314 (1971), rev'd on other grounds, Miller v. United States, Civ. No. C-70-2328 (N.D. Cal., July 5, 1973); cf. Ralph J. Mellin, 6 IBLA 193 (1972).

[3] Appellants request a hearing pursuant to 43 CFR 4.415 for the purpose of taking testimony on BLM's "continued refusal" to restore the land to entry. This request is denied. Hathern

Lewis Stacy, 23 IBLA 166, 168 (1975). If appellants wish to petition the Secretary of the Interior to have the withdrawal revoked and the land restored to entry they are at liberty to do so. This appeal, however, may not serve as the vehicle for making such a petition. Cf. James Donoghue, 24 IBLA 210, 215 (1976). Furthermore, even if such a petition were granted and the lands opened to entry under the mining laws, such action could not revive appellants' mining claims which were void when located while the withdrawal was in effect and the land was closed to entry under the mining laws. United States v. Guzman, *supra* at 117, 81 I.D. at 688; Everett E. Wilder, *supra* at 342, citing Donald E. Miller, *supra* at 314; Frank Zappia, *supra* at 183; Ralph Page, *supra* at 437; David W. Harper, 74 I.D. 141, 145 (1967).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Edward W. Stuebing
Administrative Judge

APPENDIX
List of Claims

Name of <u>Recording</u>	<u>Book</u>	<u>Page</u>	Date of Located by J. P. Hinds:	Date of	Mining Records	<u>Claim</u>	<u>Location</u>
Gold Crown No. 1			1/8/71	1/25/71	490	4	through
through					Gold Crown No. 7		" " 490 10
Hope Mine No. 1			1/9/71	1/25/71	490	11	through
through					Hope Mine No. 8		" " 490 18

Located by J. P. Hinds and
Ruth M. Hinds:

Blue Heaven No. 1	2/4/71	2/16/71	490	181	through	
through	Blue Heaven No. 30	"	"	490	210	Blue Heaven No. 31
2/11/71	5/5/71	490	943	through		through
	Blue Heaven No. 35	"	"	490	947	Blue Heaven Millsite
5/1/72	5/10/72	495	130	Blue Heaven Ext. No. 1	2/26/71	5/27/71
491	82	through		through		Blue Heaven Ext. No. 10
"	"	491	91	Blue Heaven Ext. No. 11	3/17/71	5/27/71
491	92	Blue Heaven Ext. No. 12	"	"	491	93
"	"	491	95	through		Blue Heaven Ext. No. 14
	Blue Heaven Ext. No. 17	"	"	491	98	Bonus No. 1
9/10/71	11/19/71	493	653	Bonus No. 3	"	" 493 655
	through			through	Bonus No. 11	" " 493
663	Klondike No. 25	6/1/73	8/15/73	8247	806	Klondike No. 26
"	8247	807		Klondike No. 27		" " 8247
808	Klondike No. 31	6/2/73	8/15/73	8247	812	Klondike No. 32
"	8247	813		Klondike No. 34		" " 8247
815				through		through
	Klondike No. 38	"	"	8247	819	

Black Metal Millsite 5/7/72 7/10/72 7973 693

Located by Ruth M. Hinds and
F. A. Gretscher:

	Peacock Copper No. 1	1/27/71	2/2/71	490	56		through	
					Peacock Copper No. 6	"	"	490
61	Peacock Copper No. 9	1/28/71	"	490	64		through	
					Peacock Copper No. 16	"	"	490
71	Peacock Copper No. 18	"	"	490	73			
	through		through		Peacock Copper No. 21	"	"	
490	76							

Located by J. P. Hinds, Ruth M.
Hinds and Clara S. Gretscher:

	Peacock Copper No. 22	3/7/74	5/20/74	8434	1110		Peacock	
Copper No. 23	"	"	8434	1111	Peacock Copper No. 24	"	"	8434
								1112

Located by Clara S. Gretscher and
F. A. Gretscher:

	Peacock No. 1	5/9/70	5/15/70	485	396		through	
					Peacock No. 14	"	"	485
409	Peacock Millsite	4/8/72	5/8/72	495	124		Lortie No. 1 Amended	
5/28/70	6/3/70	485	677		Lortie No. 6 Amended	"	"	485
678	Lortie No. 7 Amended	"	"	485	679		Lortie No. 8 Amended	
"	"	485	680		Ajax No. 1 Amended	"	"	485
681	through				through		Ajax No. 6 Amended	
"	"	485	686		Gold Crown Amended	"	"	
485	687	Hope Mine Amended	"	"	485	688		Poor Daisy
Amended	"	"	485	689	Ajax No. 7	5/30/70	6/9/70	485
769	through				through		Ajax No. 12	"
"	485	774			Ajax No. 13	"	8/4/70	486
325	Ajax No. 14	"	"	486	326			

through
" " 485

Located by Fred A. Gretschel:

25 IBLA 76

